

**STATE WATER RESOURCES CONTROL BOARD  
BOARD HEARING SESSION – OFFICE OF ENFORCEMENT  
SEPTEMBER 20, 2017**

**ITEM 13**

**SUBJECT**

PROPOSED DRAFT AMENDMENT TO THE POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP POLICY).

**DISCUSSION**

The State Water Board and the nine Regional Water Quality Control Boards (Regional Boards, collectively Water Boards) are governed by a statewide [Policy on Supplemental Environmental Projects \(SEP Policy\)](#), adopted in 2009. The Water Boards may allow a discharger to satisfy part of the monetary assessment imposed in an administrative civil liability (ACL) order arising out of a settlement by completing or funding one or more eligible SEPs.

Assembly Bill 1071 (AB 1071), passed into law in October 2015 as Public Resources Code (PRC) section 71118, defines a SEP as “an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty.”

The proposed [SEP Policy amendment](#) is needed to fulfill the requirements of PRC section 71118 (b), which requires each board, department, or office (BDO) within the California Environmental Protection Agency (CalEPA) to establish a policy on SEPs that benefit disadvantaged communities, and must include, but need not be limited to, all of the following:

- (1) A public process to solicit potential SEPs from disadvantaged communities.
- (2) Allowing the amount of a SEP to be up to 50 percent of an administratively imposed civil liability brought under the jurisdiction of a BDO within CalEPA.
- (3) An annual list of SEPs that may be selected to settle a portion of an administratively imposed civil liability brought under the jurisdiction of a BDO within CalEPA.
- (4) A consideration of the relationship between the location of the violation and the location of the proposed SEP.

The proposed amendments would change the SEP Policy to: apply not only to the State Water Board and the nine Regional Water Boards, but also to enforcement actions prosecuted by the Division of Drinking Water and its Districts, and the Division of Water Rights; include human right to water considerations; align with the State Water Board’s April 4, 2017, revision of the Water Quality Enforcement Policy (Enforcement Policy); and clarify certain principles that are central to the SEP Policy and improve transparency in Policy implementation based on stakeholder input.

The purpose of the Public Hearing is to provide the public with an opportunity to present oral comments to the State Water Board regarding the proposed amendments to the existing 2009 SEP Policy. Written comments must be submitted by 12:00 p.m. (noon) on Monday, September 25, 2017. A Board workshop was previously held on August 16, 2017, to present information and hear any preliminary comments. A quorum of the State Water Board may be

present at the hearing, but no State Water Board action will be taken until the adoption meeting (currently scheduled for November 7, 2017).

For more information, please refer to the [Staff Report](#) and the State Water Board's [SEP webpage](#).

## POLICY ISSUES

Various policy issues considered through internal stakeholder outreach during preparation of the Policy amendments are summarized in the table below.

Policy Consideration	Description	Direction in Proposed Policy Amendment
Public Process	PRC 71118 (b)(1) – Define a public process to solicit SEPs from disadvantaged communities (DAC).	<ul style="list-style-type: none"> <li>State Water Board to post a SEP proposal form, guidance, and evaluation criteria on its website to solicit SEPs from the general public including DACs.</li> <li>Regional Water Boards and State Water Board Divisions may choose to post their own versions of these documents.</li> <li>Encourages Water Boards to conduct additional outreach at an appropriate frequency to gain community input and actively seek SEP proposals from DACs.</li> </ul>
SEP Cap Amount	PRC 71118 (b)(2) – Allow SEPs to be up to 50 percent of the total liability. Current Policy maximum is 50 percent, but the Director of the Office of Enforcement can approve SEPs greater than 50 percent with compelling justification.	<p>Maintains current language with the addition that SEPs may be approved in amounts greater than 50 percent if the SEP will be located in or benefit:</p> <ul style="list-style-type: none"> <li>a DAC;</li> <li>an environmental justice community;</li> <li>a community with a financial hardship; or,</li> <li>if it furthers the human right to water.</li> </ul>
Annual SEP List	PRC 71118 (b)(3) – Requires an annual list of SEPs that may be selected during a settlement. Current Policy also requires Regional Boards to maintain and post a list of authorized, active SEPs.	<ul style="list-style-type: none"> <li>Requires Regional Boards and State Water Board Divisions to maintain and post on their websites a list of potential SEPs.</li> <li>Allows flexibility for each Water Board or Division to determine what level of prioritization and pre-approval is appropriate for their available staff resources.</li> </ul>
Nexus	PRC 71118 (b)(4) – Requires a relationship between the location of the violation and the location of the proposed SEP. Current Policy requires a relationship between the nature <b>OR</b> location of the violation and SEP.	<ul style="list-style-type: none"> <li>Maintains current Policy language that a nexus may be a relationship between the location <b>OR</b> the nature of the violation and SEP.</li> <li>Provides examples of when an adequate nexus relationship exists between the violation and the SEP.</li> </ul>

Policy Consideration	Description	Direction in Proposed Policy Amendment
Third Party-Administered SEPs	Add requirements specific to third party-administered SEPs.	<ul style="list-style-type: none"> <li>• Maintains that the discharger retains liability for SEPs performed by a third party for the discharger until that SEP is successfully completed</li> <li>• Recommends Water Boards that prefer to utilize a third party to administer all SEPs within their geographic or subject matter jurisdiction to utilize a vetting process.</li> <li>• Requires that SEP funds be spent on the specific project defined in the stipulated order within 24 months.</li> </ul>
Settlement Accounts	Add requirements around establishing accounts for placement of funds before SEPs are implemented. Also consider requirements for monies intended for SEPs that are deposited into third party-managed funds.	<ul style="list-style-type: none"> <li>• Requires SEPs to be specific projects with an adequate nexus to the violation.</li> <li>• Depositing monies intended for SEPs to third party-managed funds would need to be allotted to the specific project approved and agreed upon in the stipulated order and spent within 24 months.</li> </ul>
Oversight Costs	Current Policy requires oversight costs to be paid in addition to the amount of the SEP.	<p>Allows oversight costs up to 10 percent to be included as part of the total SEP amount if the SEP will be located in or benefit:</p> <ul style="list-style-type: none"> <li>• a DAC;</li> <li>• an EJ community;</li> <li>• a community with a financial hardship; or,</li> <li>• if it furthers the human right to water.</li> </ul>
Audits	Specify cases in which a third party audit is required to certify SEP completion.	<ul style="list-style-type: none"> <li>• Requires third party financial audit for any SEP over \$1M.</li> <li>• Allows any audit to be part of the SEP amount at the sole cost of the responsible party.</li> </ul>
Small Settlements	Allow several small settlements to go towards funding a larger SEP or place a cap on the settlement amount eligible to fund a SEP.	<i>Not yet added to the amendment.</i>

## FISCAL IMPACT

None.

## REGIONAL BOARD IMPACT

Yes. The proposed Policy amendments clarify certain principles that are central to the SEP Policy and seek to improve transparency in Policy implementation and will thus affect how Regional Water Boards implement SEPs to varying degrees. The proposed Policy amendments also expand the Policy to apply not only to the State Water Board's Office of Enforcement; the Division of Water Quality and the Regional Water Boards; but also to the Division of Drinking Water and its Districts; and the Division of Water Rights.

## STAFF RECOMMENDATION

None.